

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P.(PD) No. 3683 of 2018
and CMP No.20513 of 2018**

D.Rajamohan

...

Petitioner

Vs

G.Subbarayan

...

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.07.2018 made in I.A.No.152 of 2018 in O.S.No.680 of 2017 on the file of the I Additional Sub Court, Villupuram.

For Petitioner : Mr.R.Gururaj

For Respondent : Mr.C.Munusamy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 03.07.2018 made in I.A.No.152 of 2018 in O.S.No.680 of 2017 on the file of the I Additional Sub Court, Villupuram, thereby allowing the petition for attachment before judgment in respect of leave salary encashment.

2. The respondent filed a suit on the pro-note executed by the

petitioner. While pending suit, the respondent filed a petition for attachment before judgment under Order 38 Rule 5 of CPC read with Section 151 of CPC. The respondent stated that the petitioner was working as Junior Bailiff in the Principal District Court, Chidambaram and he has about to retire from service on 30.06.2018. Therefore, directed the petitioner to furnish security for a sum of Rs.2,72,692.50/- failing which, the leave salary encashment has to be attached. Order 38 Rule 5 meant for the immovable property. It is relevant to extract the provisions under Order 38 Rule 5, hereunder:-

“5. Where defendant may be called upon to furnish security for production of property :

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him.

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the

said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of Sub-rule(1) of this rule, such attachment shall be void.

3. Whereas in the present suit, the Court below attached the leave salary encashment of the petitioner, that too before judgment. Now, both the counsel on record represented that the main suit itself is posted for arguments.

4. Considering the above, the order dated 03.07.2018 passed by I Additional Sub Court, Villupuram in I.A.No.152 of 2018 in O.S.No.680 of 2017, is hereby set aside and the Civil Revision Petition is allowed. However, the learned counsel for the respondent would submit

that if the petitioner is allowed to withdraw the leave salary encashment, nothing is available with the petitioner to recover the suit amount. The learned counsel for the petitioner also undertakes that the petitioner shall not withdraw the leave salary encashment, till the disposal of the suit. The said undertaking is hereby recorded. The Court below is directed to dispose of the application and also the main suit, within a period of three months from the date of receipt of a copy of this order. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.06.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

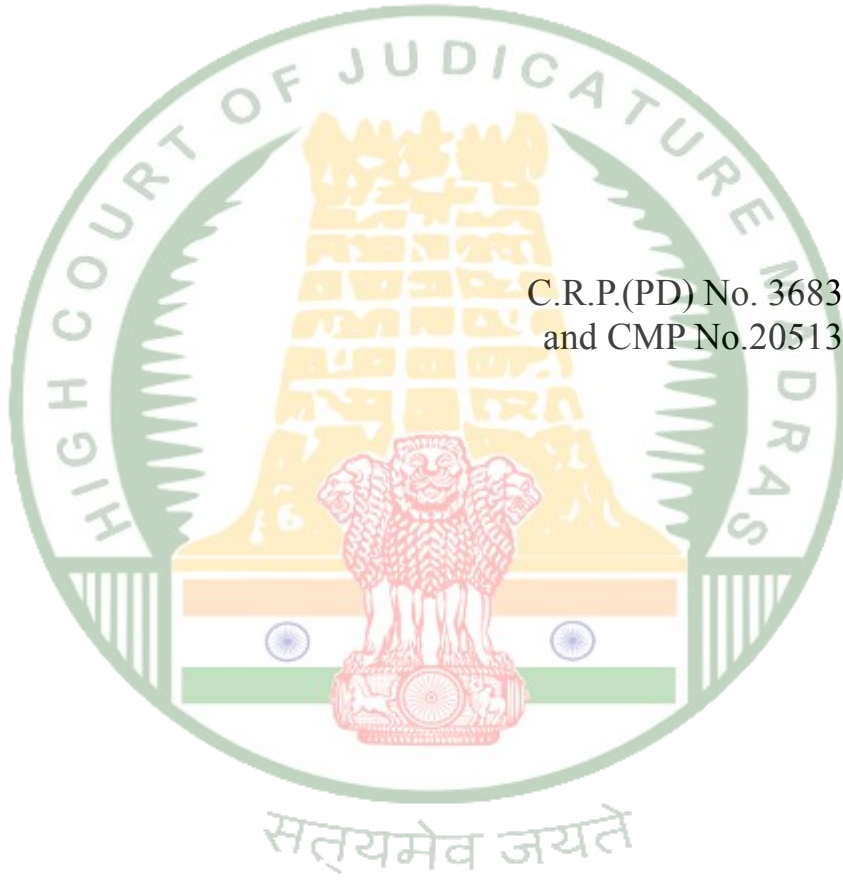
To

The I Additional Sub Judge,
Villupuram

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G.K.ILANTHIRAIYAN.J,

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